



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

Todd N. Hathaway
119 N. Commercial St., #620
Bellingham WA 98225-4437

COPY MAILED

JUN 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Andersen et al.	:	DECISION ON
Application No. 09/870,858	:	PETITION
Filed: May 30, 2001	:	
Attorney Docket No. P1065	:	

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR §1.181(a)," filed March 26, 2007.

The above-identified application became abandoned for failure to timely file a proper reply to the final Office action mailed August 15, 2006. The Office action set a three (3) month shortened statutory period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been received and no extension obtained, the application became abandoned effective November 16, 2006. A courtesy Notice of Abandonment was mailed on March 19, 2007.

In response, applicants timely filed the instant petition. Petitioner states that applicants timely filed an Amendment and Response to the Office action on October 16, 2006. The petition included a copy of the amendment as filed. In support thereof, applicants provided a copy of their itemized return postcard and a copy of the Express Mail mailing label used to transmittal the response.

A review of the petition reveals that the application number was misidentified on the transmittal. A review of the record of the misidentified application confirms that the response as petitioner maintains it was filed on October 16, 2006 was, in fact, filed with the wrong application number. Further investigation reveals that the response with a date of receipt of October 16, 2006, and a certificate of mailing pursuant to 37 CFR § 1.8 dated October 16, 2006, was entered in the

misidentified application. This has been corrected. The response filed October 16, 2006, has been "moved" from the electronic record of the incorrectly identified application to the record of the instant application. Moreover, given the itemized and date-stamped postcard, the response is considered timely filing.

Petitioner is reminded that to obtain the benefit of the date of deposit in Express Mail on petition the correspondence as originally filed must bear the Express Mail mailing label number. In this instance, it does not appear that the label number was placed on the correspondence. Fortunately, the Office was able to rely on actual receipt of the correspondence, as well as, a properly itemized and date-stamped return postcard.

In view thereof, the notice of abandonment mailed March 19, 2007 is hereby VACATED, and the holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 3677 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the response timely filed via deposit in Express Mail service on October 16, 2006 (and resubmitted on petition filed March 26, 2007).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions